

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 739 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RANCHHODBHAI JIVABHAI MACHHI

Versus

DEVIDAS PUNJALAL KHATRI

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Appearance:

MR PR THAKKAR for Petitioner

MR PV NANAVATI for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/12/1999

ORAL JUDGEMENT

#. This is a Revision Application under section 29(2) of the Bombay Rent Act (hereinafter referred to as the Act) by the original defendant-tenant challenging the judgment and decree passed by the learned Extra Assistant Judge, Baroda dated 18.6.81 passed in Regular Civil Appeal No. 127 of 1979.

#. Present petitioner is the original defendant against whom respondents nos. 1 and 2( original plaintiffs nos 1 and 2) herein had filed a suit being Rent Suit No.3703 of 1975 in the Court of Small Causes at Baroda.

#. The case of the plaintiffs in the suit was that the plaintiffs are the owners of the suit house bearing Municipal Census No.SH/7-594 situated at Dangiwad, Bhadra Kacheri, Baroda. That the defendant was residing as a tenant of the plaintiffs on the first floor of the separate house of the plaintiffs which was at Khatri pole, Bhadra Kacheri, Baroda at a monthly rent of Rs. 7/-. Said house was in a dilapidated condition and there were no water or drainage connections in the said house. Therefore, when the plaintiffs constructed the present house i.e. the suit house, a request was made by the defendant to give him one room on the first floor in the newly constructed premises of the plaintiffs. The plaintiffs therefore, let out one room on the first floor to the defendant at a monthly rent of Rs. 12/-. At that time the defendant was in arrears of rent at Rs. 309/-. That was in connection with the old premises which he was originally occupying. . That the defendant had promised to pay the said rent. However, the defendant - tenant did not pay the rent, he had fallen in arrears of rent to the tune of Rs. 672.48 p. Therefore, in respect of the arrears of rent, a demand notice under section 12(2) of the said Act was served by the plaintiffs to the defendant-tenant totally demanding Rs.672.48 p. The defendant did not comply with the said demand notice. He neither paid the rent nor handed over the possession and therefore, since the defendant was in arrears of rent for more than six months aforesaid suit being Rent Suit No.3703 of 1975 was filed by the plaintiffs against the defendant. The defendant appeared in the suit and filed his written statement at exh.14. It was contended that the suit notice is not legal. He also contended that he has filed Misc. Application No.1013 of 1975 for fixing standard rent which is pending. He further contended that the agreed rent is excessive. That the earlier premises was bigger one and the suit premisses is very small. That the plaintiff, inspite of agreeing has not provided all facilities. It was contended that the standard rent of the suit premises cannot be more than Rs. 2/- p.m. Ultimately it was prayed that the standard rent be fixed by the court. On such averments, aforesaid suit was resisted by the defendant.

#. The learned Trial Judge consolidated the Standard Rent Application being Misc. Application No. 1013 of 1975 along with the suit. The Trial Court framed issues

at exh.19. The Trial Court came to the conclusion that the defendant was in arrears of rent for more than 6 months. That the Trial Court also came to the conclusion that the defendant-tenant was ready and willing to pay the rent.

#. The Trial Court fixed the Standard Rent at Rs. 10/p.m. The Trial Court also came to the conclusion that the suit notice was not legal and valid. Ultimately, the learned Trial Judge, by his judgment and decree dated 21.2.1979, the suit for possession was dismissed and the defendant was directed to pay the amount of Rs. 250/- which was the amount of arrears of rent from 1.10.73 to 31.10.75 and the standard rent was fixed at Rs.10/with effect from 1.10.73.

#. Being aggrieved by the aforesaid judgment and decree of the Trial Court, the respondents nos 1 and 2 herein who were the original plaintiffs of the suit filed appeal being Regular Civil Appeal No.127 of 1979 under the provisions of the Act. The learned Appellate Judge came to the conclusion that the learned Trial Judge has committed an error in dismissing the suit for possession on the ground of arrears of rent. The learned Appellate Judge has observed in his judgment that it was not in dispute that the defendant was served with the notice dated 18.10.1975, office copy of which was produced at exh.65. The learned Appellate Judge has ultimately found that the suit notice was valid and legal. The learned Appellate Judge also came to the conclusion that there was no regular deposit by the defendant as contemplated under section 12(3)(b) of the said Act and therefore ultimately, the learned Appellate Judge partly allowed the appeal by setting aside the decree passed by the Trial Court regarding the possession of the suit premises and therefore, the suit for possession was decreed by the learned Appellate Judge. The learned Appellate Judge confirmed the finding about the standard rent which was fixed by the Trial Court at Rs. 10/- p.m.

#. Being aggrieved by the said order of the learned Appellate Judge, the petitioner-original defendant has filed this Revision Application under the provisions of section 29(2) of the said Act.

#. The present Revision Application was dismissed for non removal of office objections and with the result that during the intervening period, before the revision application could be restored to file, the respondents

nos 1 and 2 had already executed the decree for possession and warrant for possession was issued in their favour and they got the possession of suit property on March 28,1983 and the original plaintiffs thereafter executed an agreement to sell in favour of the present respondent no.3 who was subsequently joined in the Revision Application and had already handed over possession of the suit property to him. Aforesaid facts have been stated by way of an affidavit which is at page 37 of the compilation. The tenant has also filed an application being Misc. Civil Application No.788 of 1982 for restoration and the Revision Application was restored to file. Thereafter the petitioner filed Civil Application No. 1477 of 1983 for a prayer that the respondents nos. 1 and 2 may be directed to hand over possession of the suit property to the petitioner and that the respondents nos 1 and 2 may be restrained from giving possession of the suit premises to any one during the pendency of the Revision Application. Said Civil Application No. 1477 of 1983 was ordered to be heard with the main Revision Application. Accordingly the Revision Application is heard today along with the Civil Application No. 1477 of 1983.

#.. As stated earlier, the Civil Revision Application was restored to file after the office objections were removed by the petitioner. At the time of hearing of this Civil Revision Application, Mr. P.R.Thakkar learned advocate for the petitioner has argued that the learned Appellate Judge committed an error of law as well as of fact in reversing the decree of the Trial Court in so far as the decree for possession was concerned. It was stated by him that the suit notice under section 12(2) of the said Act was bad in law and therefore, the suit was required to be dismissed. It was further contended that the petitioner-tenant was ready and willing to pay the rent and had also deposited the rent regularly during the Trial and the the Appeal and therefore, also the suit for possession on the ground of arrears of rent was required to be dismissed. As against that Mr. P.V.Nanavati the learned advocate for the respondents submitted that the suit notice was legal and valid and so there was a clear demand as required by section 12(2) of the Act. Since the tenant did not pay any rent in response to the notice and since he was in arrears for more than 6 months, the suit for possession on the ground of arrears of rent was filed. That no doubt there was a dispute of standard rent but even after the Trial Court's judgment fixing standard rent at the rate of Rs.10/- p.m. the tenant did not deposit the same regularly during the pendency of the appeal before the District Court and the learned

Appellate Judge after considering all the aforesaid factual aspect came to the conclusion that the tenant was not entitled to protection under section 12(3)(b) of the said Act and therefore, no interference is required by this court in exercise of its revisional jurisdictions under section 29(2) of the said Act. It was also submitted that the tenant is not in possession since 1983. That the land lord by a registered sale deed has already sold the property and the purchaser is residing in the suit property since 1983 and since long the tenant is residing in other premisses. It was therefore, argued that in the facts and circumstances of the case, the decree of the learned Appellate Judge deserves be upheld.

##. I have heard the arguments of both the sides. It is not in dispute as observed by the learned Appellate Judge in para 18 of his judgment that the defendant was served with a demand notice dated 18.10.1975, copy of which is produced at exh. 65. Said notice was served by the RPAD and acknowledgment of the same is produced at exh.66. It has been pointed out that the defendant was in arrears of rent to the tune of Rs 672.48 p. Therefore, there was a clear cut demand of rent and the amount was also clearly mentioned in the said notice. Therefore, when there is already a demand of arrears of rent and the notice was served on the defendant by RPAD, it cannot be said that the suit notice was not in accordance with law. There is therefore, no substance in the argument of the learned advocate for the petitioner that the suit notice was not legal and valid. In my view, therefore, the learned Appellate Judge has rightly come to the conclusion that the said notice of demand was in accordance with law and therefore, there is no basis for the argument that the suit notice was not in accordance with law. It is not in dispute that after the receipt of the demand notice for arrears of rent, within one month the tenant had raised a dispute of standard rent. In that view of the matter the case would fall under section 12(3)(b) of the said Act. However, in order to get protection of section 12(3)(b) of the said Act, a tenant is required to pay all the arrears of rent then due in the court or before the first date of hearing of the suit and during the pendency of the suit, the tenant is required to deposit the rent regularly in the court. However, since the Trial Court did not fix the interim rent, the tenant had not deposited any amount in the Trial Court on the ground that since no interim rent was fixed by the Trial Court, it was not possible for him to deposit any amount of rent because he was not aware of the standard rent which he is supposed to deposit. Therefore, on the ground that there was no deposit of the entire rent on the first date of

hearing i.e. the date on which the issues were framed by the Trial Court, the tenant cannot be evicted on the ground of arrears of rent. However, after the decree of the Trial Court and the appeal was pending, the tenant has not deposited the rent regularly. The learned Appellate Judge has elaborately considered the aforesaid fact in paras 26 and 27 of his judgment and has come to the conclusion that the petitioner is not entitled to protection under section 12(3)(b) of the said Act. As per the judgment of the Honourable Supreme Court reported in AIR 1980 SC 954 in the case of Mrunalini B. Shah and anor. vs. Bapalal Mohanlal Shah. the tenant is required to deposit the rent regularly during the pendency of the appeal. It has been found on facts by the learned Appellate Judge in para 27 of his judgment that the petitioner-tenant has not deposited any amount of rent during the pendency of the appeal along with the amount for which decree was passed. Ultimately therefore, the learned Appellate Judge has arrived at a conclusion that the petitioner tenant has not regularly paid the amount of rent during the pendency of the appeal. In order to avail of protection under section 12(3)(b) of the said Act, a tenant is required to pay the rent regularly during the trial as well as during the appeal, as interpreted by various judicial pronouncements that the appeal is a continuous proceedings and during the pendency of the appeal, a tenant is also required to deposit the rent regularly. Since the petitioner-tenant has failed to comply with the said conditions, he cannot be protected from the clutches of decree for possession.

##. In view of the aforesaid position, it cannot be said that the learned Appellate Judge has committed any error of fact much less any error of law while deciding the appeal of the petitioner-tenant. Considering the aforesaid facts and circumstances of the case I see no merits in the aforesaid Revision Application. Since 1983 the petitioner-tenant is not in possession and the property has been given by the original landlord by executing a sale deed since 1983. Mr. P.V.Nanavati learned advocate for the respondents pointed out that since 1983 the tenant is already residing in other premises. Of course, aforesaid fact is not in any way material for deciding the controversy raised in this Revision Application. However, since the petitioner is not entitled to protection under section 12(3)(b) of the Act, it cannot be said that the decree of the learned Appellate Judge suffers from any illegality or infirmity. The revision Application therefore, deserves to be dismissed and the same is accordingly dismissed. Rule is discharged. No order as to costs

